



Office of Environment, Safety and Health

SAFETY AND ECOLOGY CORPORATION EA-2005-03

Howard Wilchins
Senior Litigator
Office of Price-Anderson Enforcement

Helping the field succeed with safe and reliable operations.





Background

- DOE has designated the contractor employee protection rule, 10 CFR 708, as an enforceable nuclear safety rule.
- Under Part 708, any contractor employee who has experienced retaliation for raising nuclear safety issues may file a complaint.
- Such complaints may be filed either with the DOE Office of Hearings and Appeals (OHA) or the Department of Labor (DOL).

Helping the field succeed with safe and reliable operations.





Background (*cont'd*)

- OHA and DOL have authority to award back pay, reinstatement and attorneys fees, among other things, if the claims are valid.
- OE has authority to issue civil penalties against contractors if valid nuclear safety concerns are raised.

Helping the field succeed with safe and reliable operations.





Case Description

- An employee of Safety and Ecology Corporation (SEC), a subcontractor at the Portsmouth site, was dismissed in 1999 for raising safety concerns, including nuclear safety concerns.
- In 2002, an OHA Hearing Officer ruled in favor of the employee and awarded back pay, reinstatement and attorneys fees.

Helping the field succeed with safe and reliable operations.





Case Description (*cont'd*)

- SEC appealed the decision.
- In 2003, the OHA Director affirmed the findings in all respects. This constituted a final agency order.
- SEC appealed the case to US District Court and requested a new trial. Both sides filed Motions for Summary Judgment. This means each side claimed they could prevail on the law and/or the record below.





Case Description (*cont'd*)

- In October 2004, the Court ruled in favor of the employee and against SEC.
- This was about five years after the case began.

Helping the field succeed with safe and reliable operations.





Enforcement Action

- In March 2005, SEC was notified OE was considering enforcement action based on the record of the case before OHA and the Court. It was asked to file supplemental documents, if any, to show mitigation should be considered.
- SEC filed documents that had almost no relevance whatsoever to the matter under consideration.





Enforcement Action (*cont'd*)

- In June 2005, a PNOV and proposed civil penalty of \$55,000 was issued. This constituted one Severity Level II penalty without mitigation.
- SEC requested rescission of the PNOV and civil penalty, without substantive basis. OE issued an FNOV without modification and the civil penalty was paid.





Lesson Learned

- Employee retaliation for raising safety concerns can have a chilling effect. Hearings in such cases can be lengthy, but it is cost efficient to await their conclusion.
- It's probably not a good idea to await appeals to US District Court since the record is generally complete before the case is appealed to the courts.

Helping the field succeed with safe and reliable operations.

